



Feature

## U.S. Supreme Court Developments: Retirements, Nominations, and a New Chief Justice

By Brent Pierce

Although its docket has not been full to the brim, the U.S. Supreme Court has had a busy few months. Developments on the personnel side — as opposed to a heavy caseload—have dominated the headlines, and it's time for a quick review.



On October 3, 2005, the new Supreme Court term was off to an eventful start. Newly appointed Chief Justice John Roberts took his seat on the bench, and President Bush named his replacement for retiring Justice Sandra Day O'Connor. However, the nomination, under immense criticism, was withdrawn.

Bush chose to nominate White House Counsel Harriet Miers, who had served along side President Bush since his days as the Governor of Texas. Bush was quick to cite her experience and role in the White House. "For the past five years, Harriet Miers has served in critical roles in our nation's government," he noted. Miers' was celebrated as a pioneering woman while a lawyer in Texas. She was the first woman to serve as president of the State Bar of Texas and the Dallas Bar Association. She also was a member of the Dallas City Council.

However, Miers was without any judicial experience to bring to our nation's highest Court. Opponents of Harriet Miers were quick to note her lack of judicial experience, and many conservatives began the offensive against her ideology. The right-wing base of the Republican Party had anticipated a nominee in the mold of Justices Scalia and Thomas, and was dismayed at the nomination of Harriet Miers, who lacked a concrete record of commitment to the conservative cause. After over three weeks of continuing attacks from conservatives, on October 27, President Bush accepted the withdrawal of the Harriet Miers' nomination.

Democrats, who limited their dissent, criticized the president of bowing to the radical right-wing. "Apparently, Ms. Miers did not satisfy those who want to pack the Supreme Court with

rigid ideologues," said Democratic Senate Leader Harry Reid.

"President Nominates Alito" Following the failed nomination of Harriet Miers, on October 31, President Bush nominated veteran judge Samuel Alito. After being attacked for nominating a woman with no judicial record, Bush praised judge Alito for his vast experience. "Samuel Alito has more prior judicial experience than any Supreme Court nominee in more than 70 years," he said.

Alito is a New Jersey native who attended Princeton for undergrad, and graduated from Yale Law School. After clerking for a federal judge, Alito was a U.S. Attorney before being confirmed by the Senate as a judge on the U.S. Court of Appeals for the Third Circuit in 1990. Alito has remained on this court where he has earned the reputation as a staunch conservative. In the landmark 1992 abortion case *Planned Parenthood v. Casey*, Alito acted alone on the court when he held that it did not place an undue burden on a wife to have to notify her husband before having an abortion. On gun rights, Alito in 1996 was the only judge to vote against upholding Congress' authority to ban fully automatic machine guns, arguing that it was not within Congressional power to regulate personal gun possession. So consistently conservative, Alito has been dubbed "Scalito" or "Scalia-lite" by some lawyers because his judicial philosophy invites comparisons to conservative Supreme Court Justice Antonin Scalia.

President Bush may have nominated someone who will solidify his conservative base, but time will tell if judge Alito will receive support from Senate Democrats. Some Democrats have mentioned a filibuster, while others have cautioned against it. Most Democrats believe, however, this nomination was made to pacify the President's conservative base. "I believe this nomination is aimed at appeasing the most right-



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wing elements of the president's political base," said Sen. Barbara Boxer of California. Time will tell, through the Senate hearings and a vote, if judge Samuel Alito will become the next Justice on the United States Supreme Court.

Brent Pierce writes for The Forum, a student publication of Valparaiso University School of Law.

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